

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JESSICA L. INGRAM,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 12-CV-0595-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment (ECF Nos. 14, 16). Plaintiff is represented by Maureen J. Rosette. Defendant is represented by Courtney Garcia. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g);
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
7 limited: the Commissioner's decision will be disturbed "only if it is not supported
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
9 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
10 relevant evidence that "a reasonable mind might accept as adequate to support a
11 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,
12 substantial evidence equates to "more than a mere scintilla[,] but less than a
13 preponderance." *Id.* (quotation and citation omitted). In determining whether this
14 standard has been satisfied, a reviewing court must consider the entire record as a
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. If the evidence in the record "is
18 susceptible to more than one rational interpretation, [the court] must uphold the
19 ALJ's findings if they are supported by inferences reasonably drawn from the
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
13 “of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy.” 42 U.S.C. §
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
16 severe than one of the enumerated impairments, the Commissioner must find the
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant's age,
16 education and work experience. *Id.* If the claimant is capable of adjusting to other
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
18 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
19 work, the analysis concludes with a finding that the claimant is disabled and is
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
3 the analysis proceeds to step five, the burden shifts to the Commissioner to
4 establish that (1) the claimant is capable of performing other work; and (2) such
5 work “exists in significant numbers in the national economy.” 20 C.F.R. §§
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

7 ALJ’S FINDINGS

8 Plaintiff filed applications for disability insurance benefits and supplemental
9 security income disability benefits on May 14, 2009. Tr. 144-152. The claims
10 were initially denied initially and upon reconsideration. Tr. 93-99; 102-107. The
11 Plaintiff requested a hearing, and a hearing was held before an Administrative Law
12 Judge on April 5, 2011. Tr. 39-82. The ALJ issued a decision denying Plaintiff
13 benefits on May 13, 2011. Tr. 21-33.

14 The ALJ found that Plaintiff met the insured status requirements of the
15 Social Security Act through March 31, 2008. Tr. 23. At step one, the ALJ found
16 that Plaintiff had not engaged in substantial gainful activity since July 31, 2006, the
17 alleged onset date. Tr. 23. At step two, the ALJ found that Plaintiff had the
18 following severe impairments: dysthymic disorder, NOS; generalized anxiety
19 disorder; personality disorder, NOS; substance induced mood disorder;
20 polysubstance dependence, in remission by self-report; cannabis abuse; ongoing

1 fibromyalgia; and obesity. Tr. 23. At step three, the ALJ found that Plaintiff does
2 not have an impairment or combination of impairments that meets or medically
3 equals one of the listed impairments. Tr. 24. The ALJ then determined that
4 Plaintiff had the residual functional capacity (RFC) to:

5 Perform light work as defined in 20 CFR 404.1567(b) and 416.967(b). The
6 claimant can lift no more than 20 pounds occasionally and 10 pounds
7 frequently, stand/walk for approximately 6-hours in an 8-hour workday, and
8 sit for approximately 6-hours in an 8-hour workday. The claimant should
9 only occasionally climb ladders/ropes/scaffolds and balance (due to obesity).
10 She can frequently stoop, crouch, kneel, and crawl. The claimant should
11 avoid concentrated exposures unprotected heights and moving machinery.
12 She is able to understand, remember and carry out simple, routine, and
13 repetitive tasks involving up to 3-step commands. She should have only
14 superficial interaction with the public and with coworkers (superficial
15 defined as non-cooperative). The claimant should work in an essentially
16 isolated environment with only occasional supervisor contact. She should
17 have additional time to adapt to changes in the work setting or work routine.
18 The claimant's attention and concentration would wax and wane, but she
19 would still be able capable of maintaining productivity for the 2-hour
20 intervals between regularly scheduled breaks.

14 Tr. 26. At step four, the ALJ found that Plaintiff was unable to perform any past
15 relevant work as a fast food worker, courtesy clerk, or telephone quotation clerk.

16 Tr. 31. At step five, after having considered Plaintiff's age, education, work
17 experience, and residual functional capacity, the ALJ found that there are jobs that
18 exist in significant numbers in the national economy that the claimant can perform,
19 such as cleaner I, electrical assembler, and sorter. Tr. 31.

1 The Appeals Council denied Plaintiff's request for review on September 20,
 2 2012, making the ALJ's decision the Commissioner's final decision for purposes
 3 of judicial review. Tr. 1-5; 20 C.F.R. §§ 404.981, 416.1484, and 422.210.

4 ISSUES

5 Plaintiff raises two issues for review:

- 6 1. Whether the ALJ properly rejected the opinions of examining sources;
- 7 and
- 8 2. Whether substantial evidence supports the ALJ's conclusions regarding
- 9 Plaintiff's psychological limitations.

10 ECF No. 14 at 9, 12.

11 DISCUSSION

12 **A. Rejection of Examining Sources and Reliance on Non-examining** 13 **Source.**

14 A treating physician's opinions are entitled to substantial weight in social
 15 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
 16 (9th Cir. 2009). If a treating or examining physician's opinion is uncontradicted,
 17 an ALJ may reject it only by offering "clear and convincing reasons that are
 18 supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th
 19 Cir. 2005). "However, the ALJ need not accept the opinion of any physician,
 20 including a treating physician, if that opinion is brief, conclusory and inadequately

1 supported by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and citation
2 omitted). “If a treating or examining doctor's opinion is contradicted by another
3 doctor's opinion, an ALJ may only reject it by providing specific and legitimate
4 reasons that are supported by substantial evidence.” *Bayliss*, 427 F.3d at
5 1216 (citing *Lester v. Chater*, 81 F.3d 821, 830–831 (9th Cir. 1995)). An ALJ may
6 also reject a treating physician's opinion which is “based to a large extent on a
7 claimant's self-reports that have been properly discounted as incredible.”
8 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (internal quotation and
9 citation omitted).

10 Although the treating physician’s opinion is generally afforded the greatest
11 weight, it is not binding on the ALJ regarding the existence of an impairment or
12 determination of disability. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir.
13 2001). Although the contrary opinion of a non-examining medical expert does not
14 alone constitute a specific, legitimate reason for rejecting a treating or examining
15 physician's opinion, it may constitute substantial evidence when it is consistent
16 with other independent evidence in the record. *Tonapetyan*, 242 F.3d at 1149
17 (citation omitted); accord *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

18 **1. Ms. Sjostrom’s Opinion.**

19 The ALJ considered the opinion of Ms. J. Brooke Sjostrom, MS, LMHC,
20 who had completed a psychological and psychiatric evaluation of Plaintiff. Tr. 28.

1 Plaintiff suggests that Ms. Sjostrom's opinion must be treated as that of an
2 examining medical source because her opinions were adopted in full by a licensed
3 psychologist, Dr. Mahlon Dalley. ECF No. 14 at 9-10. The Court agrees in part.
4 Plaintiff correctly notes, Dr. Dalley adopted Ms. Sjostrom's 6- page assessment,
5 Tr. 723-728, because Dr. Dalley specifically adopted findings and conclusions as
6 his own and "accepted accountability" for them. Tr. 728. Although Ms. Sjostrom
7 likely qualifies as an "other" medical source, Dr. Dalley is clearly an "acceptable
8 medical source." However, only Ms. Sjostrom filled out the functional limitations
9 worksheet. Tr. 719-722. Dr. Dalley signed as a "releasing authority" but did not
10 co-sign or adopt this report as his own.

11 In any event, Plaintiff contends that the ALJ did not properly reject these
12 functional limitations and therefore the limitations should be credited. ECF No. 14
13 at 12-13. Specifically, Plaintiff argues the ALJ's finding of internal inconsistency
14 was boilerplate language that did not rise to the level of specificity needed to reject
15 an examining physician's opinion. *Id.*

16 The ALJ observed that Ms. Sjostrom (and Dr. Dalley) found Plaintiff's
17 MMPI-2 validity indicators suggested that claimant's profile was invalid and
18 suggested she was over reporting psychopathology on the test...a motivation for
19 secondary gain, claimant was malingering. Tr. 28, 726-727. Further, Ms.
20 Sjostrom and Dr. Dalley found that without objective data it was difficult to

1 accurately assess her mental condition because there was the likelihood that she
2 was trying to portray herself as being more mentally ill than she may actually be.

3 Tr. 727. Consequently, the ALJ made the following findings:

4 Ms. Sjostrom's opinion is given little weight because it is
5 internally inconsistent. The undersigned notes that Ms. Sjostrom
6 has diagnosed the claimant as malingering, but had 5 "marked"
7 limitations...the results of the MMPI-2 indicating it was invalid
8 due to overreporting of symptomology is given significant weight
9 as that test is an objective measure of psychological pathology and
10 contains validity tests for the very purpose of establishing whether
11 someone is malingering.

12 Tr. 28.

13 If there is no evidence of malingering, the ALJ's reasons for discrediting the
14 claimant's testimony must be "specific, clear and convincing." *Chaudhry v.*
15 *Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (quotation and citation omitted). Here,
16 there is substantial evidence of malingering, thus, the ALJ was properly permitted
17 to find Plaintiff not credible and discount her testimony. Tr. 27. Plaintiff has not
18 challenged this negative credibility finding. The ALJ noted that three separate
19 medical providers either diagnosed malingering, factitious disorder, or noted
20 symptom exaggeration. Tr. 28-30. An ALJ may also reject a treating physician's
opinion which is "based to a large extent on a claimant's self-reports that have been
properly discounted as incredible." *Tommasetti*, 553 F.3d at 1041. The ALJ

1 provided specific, clear and convincing reasons for rejecting Ms. Sjostrom's
2 functional limitations assessment in light of the invalidity of her test results.

3 **2. Dr. Rachael McDougall's Opinions.**

4 Plaintiff claims that the opinion of Dr. Rachael McDougall was not properly
5 rejected, and the ALJ did not provide the requisite specific and legitimate reason
6 supported by substantial evidence to reject Dr. McDougall's opinions. ECF No. 14
7 at 12-13. In her reply brief, Plaintiff argues that Dr. McDougall did not rely solely
8 on her self-reports and it was error to reject those since Dr. McDougall performed
9 two examinations which were extensive. ECF No. 17 at 2-3.

10 Dr. Rachael McDougall, Psy.D, completed a psychological/psychiatric
11 evaluation for Washington State Department of Social and Health Services
12 (DSHS) in February 2009. Dr. McDougall diagnosed Plaintiff with the following
13 conditions:

14 ...somatization disorder; personality disorder, NOS, with borderline
15 and anti[-]social features; cannabis dependence sustained in partial
16 remission; factitious disorder combined with psychological and
physical signs and symptoms; and posttraumatic stress disorder,
chronic, severe...claimant had 9 months of sobriety by self report...

17 Tr. 28-29, 678-681. The ALJ gave little weight to Dr. McDougall's opinions. Tr.
18 29. The ALJ reasoned that Dr. McDougall had relied on check-box forms of a
19 single examination [each time], based on a self-report by Plaintiff in a secondary
20

1 gain context. Tr. 29. The ALJ explained that the check-box forms were
2 unsupported by clinical observations. *Id.*

3 A review of the record shows the check-box forms were accompanied with
4 narratives, but the narratives provide little explanation to support Dr. McDougall's
5 ultimate opinions regarding functional limitations. Tr. 682-686, 694-701.
6 Significantly, at her last examination Dr. McDougall found Plaintiff's test results
7 indicated a tendency to exaggerate both her physiological and psychological
8 symptoms. Tr. 700. While Plaintiff believes she is incapacitated by her ailments,
9 Dr. McDougall found her ailments were not substantiated by medical examination.
10 *Id.*

11 It must be remembered that the ALJ found Plaintiff not credible and
12 discounted her testimony. Tr. 27. Plaintiff has not challenged this negative
13 credibility finding. The ALJ was therefore also justified in rejecting Dr.
14 McDougall's opinions, because they were based largely on Plaintiff's self-reports.
15 With substantial evidence of malingering, the ALJ was properly permitted to reject
16 Dr. McDougall's conclusion that Plaintiff was disabled.

17 **3. Opinion of Dr. William Greene, Ph.D.**

18 Plaintiff argues that Dr. Greene's opinion should be credited, because the
19 ALJ failed to set forth the requisite, specific and legitimate reasons supported by
20 substantial evidence to reject Dr. Greene's opinion. ECF No. 14 at 16.

1 Dr. Greene performed a psychological/psychiatric evaluation for DSHS in
2 October 2010. Tr. 760. He opined that Plaintiff suffered from severe and marked
3 limitations in various aspects of her functioning. Tr. 764. Plaintiff's MMPI-2
4 scores were invalid due to over reporting and Dr. Greene acknowledged the
5 possibility of some exaggeration of complaints and problems. Tr. 767-768.

6 The ALJ rejected Dr. Greene's assessed limitations because:

7 ... Dr. Greene noted his testing of the claimant was invalid due to
8 significant exaggeration, but he failed to differentiate from those
9 exaggerations when he established the "limits" on his check box form.
10 Consequently, his findings and opinions are internally inconsistent. In
11 addition, Dr. Greene accepted the claimant's self-reports at face value
and as noted earlier the claimant was not reliable and/or credible, so
any diagnosis and conclusions based on her self-reports that are
inherently without a valid basis.

12 Tr. 30. Thus, once again the ALJ provided specific, clear and convincing reasons
13 supported by substantial evidence for rejecting Dr. Greene's functional limitation
14 assessment.

15 **4. Dr. Martin's Opinion.**

16 Plaintiff contends that the ALJ erroneously relied on the testimony of Dr.
17 Marian Martin, a non-examining medical expert, over the opinions of examining
18 doctors. ECF No. 14 at 12.

1 At the hearing, Dr. Martin, a psychological expert, testified based upon her
2 review of the entire record. Tr. 51-63. The ALJ accepted Dr. Martin's testimony
3 that:

4 ...claimant's diagnosed anxiety disorder and in later medical records,
5 a diagnosis of posttraumatic stress disorder, are without merit...the
6 claimant had numerous situations in which the claimant was
7 diagnosed with factitious disorder and malingering and most [were]
8 when the claimant was applying for disability...there were several
9 evaluations in which the claimant would exaggerate her symptoms
10 significantly which would make it difficult to assess the actual
11 severity of her reported symptoms...

12 Tr. 30. Having properly rejected the other psychological opinions, the ALJ stated:

13 The undersigned accords Dr. Martin's opinion great weight because
14 she is highly qualified in her area of expertise, psychology, she
15 reviewed the entire medical record and the medical record supports
16 her opinion. Further, Dr. Martin provided ample explanation at the
17 hearing, based on objective findings, as to the basis for her
18 conclusions.

19 Tr. 31. Plaintiff's interpretation of the evidence is insufficient to require this Court
20 to reverse the ALJ's decision when that decision is supported by substantial
evidence and the ALJ gives specific and legitimate reasons for discounting
Plaintiff's examining psychologists, as was done in this case. *See also Tonapetya*
v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (explaining that "a contrary opinion
of a non-examining medical expert . . . may constitute substantial evidence when it
is consistent with other independent evidence in the record.").

1 **B. Psychological Limitations.**

2 Plaintiff contends that there is a lack of substantial evidence to support the
3 ALJ's findings regarding her psychological impairments, because Plaintiff believes
4 she is more psychologically limited than determined by the ALJ. ECF No. 14 at 9.

5 This argument is derivative of Plaintiff's previous arguments. Since the
6 ALJ properly discounted the opinions of Plaintiff's examining physicians and
7 accepted the testimony of the medical expert, substantial evidence supports the
8 ALJ's findings. No error has been shown.

9 **IT IS HEREBY ORDERED:**

10 1. Defendant's Motion for Summary Judgment (ECF No. 16) is

11 **GRANTED.**

12 2. Plaintiff's Motion for Summary Judgment (ECF No. 14) is **DENIED.**

13 The District Court Executive is hereby directed to file this Order, enter
14 Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

15 **DATED** October 31, 2013.



17 *Thomas O. Rice*
18 THOMAS O. RICE
19 United States District Judge
20